IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 30987 of 2003(L)

PETITIONER:

T.V.VINCENT S/O. THARAYIL VARGHESE,
ALOOR VILLAGE AND DESOM, THALAPPILLY TALUK,
TRICHUR DISTRICT

BY ADV. SRI.V.R.DHEERAJ

RESPONDENTS:

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1. ST.THOMAS FAMILY WELFARE SOCIETY,
CHOWALLURPADI, THRISSUR DISTRICT, REPRESENTED
BY ITS PRESIDENT

2. ST.THOMAS FAMILY WELFRARE SOCIETY,
CHOWALLURPADI, THRISSUR DISTRICT, REPRESENTED
BY ITS SECRETARY.

BY ADV. SRI.K.N.PADMAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 30987 OF 2003

APPENDIX

PETITIONER'S EXHIBIT:

EXT.P1 : TRUE COPY OF THE ORDER DT.03.09.03 IN EA NO.278 OF 2003 IN EP NO.399 OF 2002 PASED BY THE MUNSIFF COURT, WADAKKANCHERY.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 30987 OF 2003

Dated this the 5th day of June, 2007

JUDGMENT

The learned counsel for the 1st respondent reports that the counsel for the petitioner no longer practises in this court since he has taken up employment elsewhere. The writ petition has been posted as defective on the reason that the service on the 2nd respondent is not complete. I find that service on the 2nd respondent is unnecessary since the 2nd respondent is the Secretary of the decree holder Society and the 1st respondent, President of the Society has already entered appearance.

2. Heard counsel for the respondent who supported Ext.P1 order. In response to the notice from the execution court in a proceeding for execution of a simple money decree passed against them, the respondents entered appearance through counsel. The petitioner is the 2nd judgment debtor in the decree obtained by the decree holder society under which the petitioner along with the first defendant-principal debtor are liable to pay a sum of Rs.77,479/- as on 3.10.2000. It appears that the decree was passed ex-parte since the counsel for the defendants reported 'no instructions'. The petitioners filed IA No.1379 for setting aside the ex-parte decree. But since the trial court did not grant stay

against execution the respondent levied execution. The execution court found that no objections had been filed by the judgment debtors to the arrest notice and hence ordered arrest. On coming to know about the arrest, the petitioner entered appearance before the execution court and filed EA No.278 of 2003 for recalling the order of arrest and for staying the execution proceedings till disposal of the application already filed by him for setting aside the ex-parte decree. The execution court issued stay on condition that the petitioner should furnish security for decree debt. On finding that no security had been furnished, the court passed Ext.P1 order dismissing the application for stay. Ext.P1 is impugned on various grounds. I do not think that the execution court was justified in directing the judgment debtor to furnish security for the decree debt since subject to the result of the application filed by the petitioner to set aside the ex-parte decree, the decree was liable to be executed by him.

3. But the ground which is prominently raised is that the court below should have stayed the execution proceeding without imposing any conditions in view of the application to set aside the ex-parte decree. It was for the petitioner to approach the trial side either for getting a stay pending disposal of the ex-parte decree or for an early disposal of the application for setting aside the ex-parte decree. It is contended in this memorandum that the petitioner is a very poor person

who is incapable of 'furnishing security' for the decree debt within a short period. But I do not find any contention raised that he is not capable of paying even a substantial portion of the decree debt.

Under these circumstances, I am of the view that the Writ Petition itself can be disposed of issuing the following directions:

1. If IA 1379 of 2003 is even now pending before the Trial Court, that court will take up that IA and dispose of the same early and at any rate within one month of receiving a copy of this judgment.

2. The petitioner will not be arrested and detained in pursuance to the order of arrest passed against him(which was sought to be recalled as IA 778 of 2003), if he pays the respondents within one month of receiving copy of this judgment, a sum of Rs.5,000/- and continues to pay till such time as the entire decree debt is wiped off on the first of every succeeding month commencing from the 1st of August 2007 at the same rate.

The remedies, if any, the petitioner has against the order of arrest are not foreclosed.

PIUS C. KURIAKOSE, JUDGE

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